

SERVED: June 14, 2004

NTSB Order No. EA-5099

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 14th day of June, 2004

_____)	
MARION C. BLAKEY,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-17087
v.)	
)	
GARY D. COLLEY,)	
)	
Respondent.)	
_____)	

OPINION AND ORDER

The respondent has appealed from the written decision Administrative Law Judge Patrick G. Geraghty served in this emergency revocation proceeding on April 29, 2004.¹ By that order, the law judge granted a motion by the Administrator to

¹The Administrator's emergency order revoked respondent's airman (airline transport pilot, flight instructor, and ground instructor) and medical certificates for his alleged intentionally false or fraudulent entries on various applications in violation of FAR section 67.403(a)(1) and for lack of good moral character under FAR section 61.153(c).

dismiss the appeal to the Board from her order as untimely.² For the reasons given below, the appeal will be denied.³

We need not review in detail the law judge's thorough explanation of his conclusion that respondent's notice of appeal from the emergency revocation order was untimely, for respondent's appeal brief presents no basis for disturbing the law judge's ruling.⁴ Instead, the brief attempts to argue, among other matters extraneous to the decisional order, issues concerning the merits of the Administrator's order of revocation, issues that the law judge never reached because the appeal was late.⁵ As we find no error in the law judge's conclusion on the

²A copy of the law judge's "Decisional Order" is attached.

³The Administrator has filed a reply brief opposing the appeal. Along with the reply, the Administrator has filed a motion to dismiss the appeal from the law judge's decision as untimely. That motion is denied. The respondent filed, by facsimile, a timely notice of appeal on May 3, its due date. He appears to have neglected to serve a copy of the notice on the Administrator's counsel.

⁴Rule 48(b)(2) of the Board's Rules of Practice, 49 C.F.R. Part 821 provides as follows:

* * * * *

(2) The appeal brief shall enumerate the appealing party's objections *to the law judge's initial decision or appealable order*, and shall state the reasons for such objections, including any legal precedent relied upon in support thereof.

Emphasis added.

⁵Respondent does, in his response to the Administrator's motion to dismiss the appeal from the law judge's decision, include some arguments concerning the nature of service of the emergency order. These arguments, neither presented to the law judge nor included in his appeal brief, are not properly before us. Nevertheless, we would point out that delivery by FedEx of the Administrator's order at respondent's residence was valid constructive service, whether he was home or not, and whether his

issue of the timeliness of the appeal from the emergency revocation order, it will be sustained.

ACCORDINGLY, IT IS ORDERED THAT:

1. The respondent's appeal is denied; and
2. The April 29, 2004 order of the law judge is affirmed.

ENGLEMAN CONNERS, Chairman, ROSENKER, Vice Chairman, and GOGLIA, CARMODY, and HEALING, Members of the Board, concurred in the above opinion and order.

(..continued)

twelve-year old daughter accepted it. Moreover, the order was also served by regular mail, and by certified mail which respondent never retrieved from the Postal Service. The requirements of our rules on service were fully met.